

REMARKS

Claims 1-21 are pending. Claims 1 and 14 have been amended by this Response. Claims 2-13 and 15-21 remain unchanged by this Response. Reconsideration in light of the amendments and the following remarks is respectfully requested.

General Comments

By Office Action mailed on January 10, 2005, Examiner Donovan rejected all claims relying primarily on a rejection under 35 USC §102(b) citing to *Moirano*, US Patent No. 3,556,810. Applicants timely responded to this Office Action with a combination of argument and narrowing amendments.

Examiner Donovan issued a second, and final, Office Action mailed on July 26, 2005, withdrawing all rejections based on the primary art cited, the *Moirano* Patent, but listing new rejections under 35 USC §103 and citing several new prior art patents in support of these rejections. Applicants again responded with a combination of argument and narrowing amendments. A Request for Continued Examination was also filed.

A new Examiner, Examiner Kuhns, next responded with an Office Action that no longer cites the prior art previously used in support of rejecting Applicants' claims. Instead, Examiner Kuhns presents a new set of prior art in support of rejections under both 35 USC §102 and 35 USC §103. Thus, after previously overcoming two different sets of prior art by narrowing amendments, it appears to Applicants that a third prior art search has now been performed with a new set of art cited by Examiner to support anticipation and obviousness rejections.

As will be shown below, Applicants believe that all claims are in a condition for allowance. Should the Examiner have any issues remaining as to why all of Applicants' claims should not issue, Applicants request an interview with the Examiner, which can be arranged by

contacting Applicants' patent attorney, Colin Cahoon, at 972-367-2001, in order to expedite the issuance of this patent as economically as possible for both Applicants and the USPTO.

Claim Rejections -- 35 USC §112

Examiner rejected Claims 1-13 under 35 USC §112, first paragraph, as failing to comply with the written description requirements. Examiner asserts that there is insufficient support in the specification for the newly added limitation, "containing substantially no calcium." Applicants respectfully disagree with Examiner's position in this regard. However, in order to clearly place all claims in a condition for allowance, Applicants have amended Claim 1 to indicate that the hydration of the low-methoxyl pectin occurs in water. In light of this amendment, the rejection of Claims 1-13 under 35 USC §112 is believed to be overcome. Applicants respectfully request Examiner to withdraw such rejection.

Claim Rejections -- 35 USC §102

Examiner rejected Claims 1, 6-8, 13-15, and 19 under 35 USC §102(b) as being anticipated by *Olliver*, US Patent No. 2,910,365. This rejection is respectfully traversed.

Examiner asserts that *Olliver* discloses "heating a liquid fraction to at least 140°F (milk is inherently pasteurized at such a temperature) [and] mixing the aqueous pectin solution with the liquid fraction" However, Examiner ignores the limitation of step (c) of Claim 1 that requires the mixing of the aqueous pectin solution with "said heated liquid fraction of step (d)." (Emphasis added.) Not only is this limitation not disclosed by the *Olliver* Patent, but the *Olliver* Patent specifically teaches away from mixing a pectin solution with a heated liquid fraction containing calcium. *Olliver* teaches in Column 1, at Lines 24-30, that an object of the *Olliver* invention is "to provide a liquid pectin-containing composition which is adapted to be made relatively quickly into a milk-containing table jelly by the simply step of merely admixing the composition with milk at room temperature without the application of heat." (Emphasis added.)

Further, in Claim 1 of the *Olliver* Patent in Column 5, at Lines 6-10, the *Olliver* Patent specifically requires that the milk (which Examiner asserts is a liquid fraction comprising soluble calcium) is mixed with the aqueous pectin solution "without heating."

Examiner further asserts that the *Olliver* Patent discloses adding a fruit component. However, Examiner ignores Applicants' limitation that the fruit component added in step (d) of Claims 1 and 14 is added to the entire mixture after the pectin solution and the calcium-containing liquid fraction are mixed together. All of the examples cited in *Olliver* require that any fruit component be added to the pectin solution prior to mixing the pectin solution with milk (which Examiner asserts is the equivalent of Applicants' liquid fraction comprising soluble calcium.) When rejecting a method claim under 35 USC §102 by citation to a single piece of prior art disclosing an allegedly similar method, Examiner cannot simply dismiss the order of the steps involved as irrelevant to the rejection "when the method steps implicitly require that they be performed in the order written." Interactive Gift Express, Inc. v. CompuServe, Inc., 256 F.3d 1323, 1342 (Fed. Cir. 2001). In this case, the method steps expressly require performance in a specific order, and Examiner cannot ignore this limitation. MPEP 2111.01.I. Applicants would further point out the following with regard to each of the individual claims rejected by Examiner as anticipated by *Olliver*.

With regard to Claim 1, *Olliver* does not disclose heating a liquid fraction to at least 140°F. Further, *Olliver* does not disclose mixing this heated fraction with a hydrated pectin solution. Further, *Olliver* does not disclose adding a fruit component to the mixture obtained from step (c).

With regard to Claim 6, *Olliver* does not disclose that the liquid fraction (of step (b) of Claim 1) comprises a juice concentrate. The only juice concentrate disclosed by *Olliver* involves the addition of various juices in the low-methoxyl pectin solution. First, it is noted that nowhere

in *Olliver* does it disclose that any solution be heated, much less a juice concentrate. Second, Examiner takes the position that the milk added at the last stage of the *Olliver* Patent is the equivalent of the liquid fraction comprising a soluble calcium of Applicants' invention. Yet, Claim 6 does not indicate that the addition of the juice concentrate takes place at the hydration of the low-methoxyl pectin step (a). Consequently, not only does *Olliver* not disclose the limitations of Claim 6, but *Olliver* specifically teaches away from these limitations by indicating that juices are added at a different step to a different component than that listed in Applicants' claims.

With regard to Claim 7, the same argument applies as with Claim 6 above. The only addition of what might be interpreted as a fruit puree occurs in the *Olliver* Patent as an addition to the low-methoxyl pectin solution, not the liquid fraction that contains calcium.

With regard to Claim 8, Examiner asserts that "the process of *Olliver* meets the claimed method steps." To the contrary, nowhere in *Olliver* is disclosed an elevated temperature of the solution that is being mixed, as required by the limitation that the "mixing step (c) occurs at a temperature above the gelation temperature of the pectin and solution." Again, *Olliver* teaches that the mixture occurs at a room temperature without the application of any heat at any stage of the *Olliver* invention. Examiner further asserts that *Olliver* would attain a homogenous or grainy appearance. To the contrary, *Olliver* specifically teaches that the resulting composition is "adopted to be made up to a table jelly" as disclosed in Column 1, Line 17. Nothing in the *Olliver* disclosure indicates that a table jelly would have a "homogenous, gritty, or grainy appearance."

With regard to Claim 13, Examiner evidently takes the position that the product in the product-by-process claim of Applicants' invention is the same as the product of the *Olliver* prior

art. Without citation to any evidence supporting this position, Examiner then requires that Applicants submit evidence that the claimed process produces a product that is different from the prior art. Examiner thus takes the position that Applicants must disprove a fact that has not been presented or supported by Examiner. To the contrary, the MPEP admonishes that it is "not . . . appropriate for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well-known are not capable of instant and unquestionable demonstration as being well-known." MPEP §2144.03.A. The MPEP makes it clear that "the applicant should be presented with the explicit basis on which the examiner regards the matter as subject to official notice and be allowed to challenge the assertion in the next reply after the office action" MPEP §2144.03.B. Further, Applicants would point out that the only evidence provided by the *Olliver* reference is that the resultant product produced by the *Olliver* method is of a table jelly consistency. This disclosure does not comport with the product specifically claimed by Applicants and specifically disclosed in the application. Unless Examiner can present specific evidence to support the proposition that the product produced by *Olliver* is the same as the product produced by Applicants' claims, Applicants respectfully request that the Examiner withdraw the rejection of Claim 13.

With regard to Claim 14, the *Olliver* reference does not disclose mixing the aqueous solution of step (a) with a liquid fraction at a controlled rate of both mixing and addition of aqueous solution to the liquid fraction. Nowhere in the *Olliver* reference is this limitation disclosed. Examiner cannot ignore this limitation when asserting that Claim 14 is anticipated by *Olliver*. Further, *Olliver* does not disclose adding a plurality of food pieces to the mixture attained by step (b). As noted previously, the only addition of food pieces contemplated by *Olliver* would occur with the addition of food pieces at step (a) when hydrating the low-methoxyl pectin in water. Further, nowhere in *Olliver* is disclosed the limitation that the addition

of the food pieces "reduces the temperature of the mixture." Again, Examiner cannot simply ignore this limitation when asserting Claim 14 as anticipated by *Olliver*.

In regard to Claim 15, *Olliver* does not disclose that any food pieces are added at step (c) that comprise fruit. As noted previously, the only disclosure of the addition of fruit in *Olliver* is to the low-methoxyl pectin solution, which would be an addition of food pieces to step (a).

With regard to Claim 19, please see the argument above as to Claim 13.

Examiner rejected Claims 13, 14, 15, and 19 under 35 USC §102(b) as being anticipated by *Waitman*, US Patent 3,367,784. This rejection is respectfully traversed.

In regard to Claims 13 and 19, Examiner again appears to take official notice that the product produced by the *Waitman* reference is the same as the product produced by Applicants' invention. After making this leap of faith, Examiner then requires Applicants to submit evidence to the contrary. As noted previously, it is not Applicants' burden to disprove something that is not in the record. Further, the only evidence presented in *Waitman* indicates that the product produced by the process in *Waitman* is nothing more than a gelatin dessert composition having a "mouth melt and texture characteristic which is distributed and sold in a gel state" (See, e.g., Col. 2, Lns. 19-21). Thus, *Waitman* teaches that the product produced by the *Waitman* process is considerably different from the product described and claimed by Applicants. For example, Applicants refer Examiner to Page 15, Ln. 7, of Applicants' disclosure wherein the food product produced by Applicants' process is described as "having a semi-fluid matrix with a texture that can be described as pulpy, grainy, or beady" Applicants respectfully request that Examiner cite specific evidence showing that the *Waitman* process produces a same or similar product as that produced by the process claimed by Applicants. Absent such specific reference, Applicants respectfully request that the rejection of Claims 13 and 19 be withdrawn.

In regard to Claim 14 and 15, Examiner asserts as follows:

Waitman discloses a method comprising the steps of hydrating low-methoxyl pectin in an aqueous solution containing substantially no calcium; heating a liquid fraction to at least 140°F; mixing the aqueous pectin solution with the liquid fraction wherein the liquid fraction comprises soluble calcium with approximately 125 mg. of calcium per gram of pectin; and adding a fruit component to the mixture (see example 1).

Assuming for a moment that Examiner is correct in this regard, such assertion has little bearing on Claims 14 and 15, which have substantially different limitations than those Examiner asserts are disclosed by the *Waitman* art. Specifically, Examiner does not point to the portion of *Waitman* that either discloses or teaches the mixing of the low-methoxyl pectin aqueous solution of step (a) with a liquid fraction at a controlled rate of both mixing and addition of aqueous solution to the liquid fraction, wherein said liquid fraction comprises soluble calcium. Applicants respectfully request that the Examiner either cite that portion of *Waitman* that discloses this limitation, or withdraw the rejection of Claims 14 and 15 based on *Waitman*.

Also in regard to Claims 14 and 15, Examiner asserts that *Waitman* discloses adding a fruit component to the mixture "at a temperature of 190°F and it is not clear that substantial cooking of the fruit would occur at this temperature." First, Applicants point out that Examiner has again failed to address a limitation in Claim 14 in this regard. Specifically, step (c) of Claim 14 requires that the addition of the food pieces "reduces the temperature of the mixture." Nothing in the *Waitman* disclosure teaches such limitation. Second, Applicants dispute Examiner's assertion that the fruit in *Waitman* is not cooked. In fact, *Waitman* teaches the preference for cooked fruits in its process at Col. 5, Lns. 58-67.

Examiner rejected Claims 13 and 19 under 35 U.S.C. §102(b) as being anticipated by *Gordon*, U.S. Patent 2,629,655. This rejection is respectfully traversed.

As with the previous rejections of Claims 13 and 19, Examiner appears to make the assumption that the product produced by the *Gordon* process is the same as the product produced by Applicants' claimed invention. Again, Applicants request that Examiner indicate the grounds for such assumption. Further, Applicants would point out that the portion of *Gordon* cited to by Examiner relates to nothing more than the production of jam or jelly and makes no mention of the unique product produced by Applicants' claimed invention. Consequently, Applicants respectfully request that the rejection of Claims 13 and 19 based on *Gordon* be withdrawn or further explained.

Examiner rejected Claims 13 and 19 under 35 U.S.C. §102(b) as being anticipated by *Baker*, U.S. Patent 2,605,188. This rejection is respectfully traversed.

Again, Examiner apparently assumes that the product produced by the *Baker* process is the same as the product produced by Applicants' claimed invention. Again, Applicants request that Examiner either support this assumption or withdraw the rejection. Further, Applicants would point out that the disclosure of *Baker* clearly demonstrates that the product produced by the *Baker* process has no relation to the product produced by Applicants' claimed invention. The very first sentence of the *Baker* Patent, for example, indicates that the product produced by the *Baker* method involves "frozen fruit and vegetable juices."

Claim Rejections - 35 U.S.C. §103

Examiner rejected Claims 1, 14, and 15 under 35 U.S.C. §103(a) as being unpatentable over *Waitman* in view of *Gordon* and *Olliver*. This rejection is respectfully traversed.

Examiner asserts that *Waitman* discloses all the limitations of Claims 1, 14, and 15 with the exception of the ratio of calcium-to-pectin as claimed in Claim 1, step (c), and maintaining

the fruit component in the mixture at a temperature below which cooling of the fruit component will occur, as claimed in Claim 1 at step (d) and Claim 14 at step (c). This is not the case.

For example, Examiner ignores the limitation in Claim 14 at step (b) wherein the liquid fraction and the aqueous solution are mixed "at a controlled rate of both mixing and addition of aqueous solution to the liquid fraction." Examiner also ignores the limitation of Claim 14 at step (c) wherein the "addition of said food pieces reduces the temperature of the mixture." Applicants also refer Examiner to the previous discussion of *Waitman* above.

Further, Examiner proposes to combine the teachings of the preparation of a shelf-storable gel composition (*Waitman*) with another method for making dietetic foods (*Gordon*) with a further method for making table jelly (*Olliver*). Each one of these prior art disclosures lists specific processing steps and ingredients with few similarities between the methods other than the use at some point of a low-methoxyl pectin. Applicants assert that it is improper for Examiner to pick and choose specific ingredients and processing steps taken out of context from these three divergent teachings in support of an obviousness rejection of Applicants' claimed invention. It has long been established that the motivation is lacking where the proposed modification would destroy the intended function of the reference. *See, In Re Fritch*, 972 F.2d at 1265 n. 12, 23 USPQ 2d at 1738 n. 12 ("A proposed modifications [is] inappropriate for an obviousness inquiry when the modification render[s] the prior art reference inoperable for its intended purpose."); *In Re Ratti*, 270 F.2d 810, 813, 123 USPQ 349, 352 (CCPA 1959) (holding the suggested combination of references improper under Section 103 because it "would require a substantial reconstruction and redesign of the elements shown in [a prior art reference] as well as a change in the basic principles under which [the references'] construction was designed to operate.") For example, Examiner attempts to combine the concept of using fresh fruit as

disclosed by *Olliver* with *Waitman* in order to address the limitation of maintaining the fruit component in the mixture at a temperature below which cooling of the fruit component will occur. Yet, *Olliver* specifically requires that the entire mixture not be heated. "According to the invention, I provide an aqueous low-methyl pectin-containing composition adapted to be made into a table jelly by simple admixture with milk without heating comprising an aqueous solution containing low-methyl pectin substantially completely disbursed therein" (Col. 1, Lns. 31-36). It is difficult to understand how this teaching can be combined with a method that requires that the mixture be heated to 190°F during mixing. (See *Waitman*, Example 1). Particularly difficult to understand is how this combination can be cited as an obvious combination for refraining from cooking fresh fruit when the art used to provide the element of fresh fruit prohibits cooking while the art it is combined with requires cooking.

A similar problem arises with Examiner's attempted combination of *Gordon* with *Waitman* and *Olliver*. *Gordon* provides a single mixture which includes low-methoxyl pectin and calcium. Yet, *Waitman* requires two separate mixtures, a first mixture having the pectin and a second mixture having a source of calcium. Both of the mixtures in *Waitman* are heated prior to combination. None of these teachings comport with the recipe disclosed by *Gordon*.

In light of all of the above, Applicants request that Examiner withdraw the rejection of Claims 1, 14, and 15 wherein Examiner asserts the *Waitman*, *Gordon*, and *Olliver* prior art in combination to support a 35 U.S.C. §103(a) rejection.

Examiner rejected Claims 2 and 3 under 35 U.S.C. §103(a) as being unpatentable over *Olliver*, as previously applied, and in further view of *Ross*, U.S. Patent No. 3,185,576. This rejection is respectfully traversed.

As noted above, *Olliver* does not disclose all of the limitations of Claim 1. Consequently, *Olliver* cannot be combined with *Ross* in the manner suggested by Examiner to support an obviousness rejection.

Further, the combination of *Ross* and *Olliver* as proposed by Examiner is not appropriate. For example, Examiner asserts it would have been obvious to combine the heating of the methoxyl pectin solution of *Ross* with the composition of the methoxyl pectin solution of *Olliver*. Yet, as previously noted, *Olliver* specifically teaches that the *Olliver* methoxyl pectin solution should not be heated. Other than the presence of the low-methoxyl pectin, the ingredients used in *Olliver* are completely different from the ingredients used in *Ross*, both in amounts of ingredients used and the types of ingredients added and when. Thus, it is difficult to see how it would have been obvious to take a temperature heating range out of one of the method steps of *Ross* and assert that it would have been obvious to combine this teaching with *Olliver*, particularly in light of the goal of *Olliver* to prepare a composition "without the application of heat." (See, e.g., *Olliver* at Col. 1, Lns. 27-29). It is also noteworthy that *Ross* teaches away from Applicants' invention in a number of regards, including a different required ratio of calcium to pectin. For at least these additional reasons, Examiner should withdraw the rejections of Claims 2 and 3 under 35 USC §103 as being unpatentable over *Olliver* in view of *Ross*.

Examiner rejected Claims 4 and 5 under 35 USC §103(a) as being unpatentable over *Olliver* in view of *Ross*, as previously applied, and further in view of *Daravingas*, U.S. Patent No. 6,235,320. This rejection is respectfully traversed.

As noted above, *Olliver* in view of *Ross* does not disclose all of the limitations of Claims 1, 2, and 3 on which Claims 4 and 5 depend. Consequently, *Olliver* and *Ross* cannot be

combined with *Daravingas* in the manner suggested by Examiner to support an obviousness rejection of Claims 3 and 4.

Further, Examiner proposes to combine the teachings of a method for making table jelly for housewives without the addition of heat (*Olliver*) with another method for making stabilized jelly fillings for filling cakes and cookies under extrusion (*Ross*) with a method for making yogurt products having a plurality of layers at various viscosities (*Daravingas*). Each one of these prior art disclosures lists very specific processing steps and ingredients with few similarities between the methods and starting materials. Applicants assert that it is improper for Examiner to pick and choose specific ingredients and processing steps taken out of context from these three divergent teachings in support of an obviousness rejection of Applicants' claimed invention. *See, e.g., In Re Fritch, Id.; In Re Ratti, Id.* The *Daravingas* method alone comprises a step for preparing a yogurt base, followed by a de-aeration step, followed by a heating step, followed by a homogenization step under high pressure, followed by a pasteurization step, followed by a cooling step, followed by addition of a culture in fermentation step, followed by a mixing step, followed by a cooling step, followed by another mixing step, followed by separate filler addition steps. (*See Figure 1*). Out of all of this disparate teaching, Examiner plucks the phrase "Xanthan" out of an optional ingredients list for the yogurt base to assert that such teaching from *Daravingas* would have obviously been combined with the completely divergent methods, ingredients, and objectives of the *Olliver* and *Ross* references. Other than the fact that the *Daravingas* patent does contain the word "Xanthan," Applicants respectfully request that Examiner explain how such combination would have been obvious. Otherwise, Applicants respectfully request that the rejection of Claims 4 and 5 as being unpatentable over *Olliver* in view of *Ross* and further in view of *Daravingas* be respectfully withdrawn.

Examiner rejected Claims 9-11, 16 and 17 under 35 USC §103(a) as being unpatentable over *Olliver* in view of *Ross*, as previously applied, and in further view of *Baker* and *Waitman*. This rejection is respectfully traversed.

Applicants would first note that the only rejection supported by "*Olliver* in view of *Ross*, as applied above," refer to Claims 2-5, which all depend on Claim 1. Examiner has not articulated the grounds for rejecting Claim 14 (on which Claim 17 depends) or Claim 15 (on which Claim 16 depends) as being unpatentable over *Olliver* in view of *Ross*. The steps of Claims 14 and 15 are not the same as those in Claims 1-5. Therefore, to the extent Examiner maintains the rejection of Claims 16 and 17, Applicants respectfully request that Examiner explain how all of the elements of Claims 16 and 17 are met by *Olliver* in view of *Ross* with the exception of those elements that Examiner asserts are further disclosed by *Baker* and *Waitman*. For example, Examiner does not cite to any of the four prior art patents as disclosing the mixing step requiring "a controlled rate of both mixing and addition of aqueous solution to the liquid fraction" as required by step a) of Claim 14.

Aside from the above, Examiner asserts that, while *Olliver* does not disclose the addition of frozen fruit, the *Baker* and *Waitman* references do. In making this assertion, Examiner avoids the limitations that are actually expressed in the rejected claims -- namely, that the addition of fruit is of a frozen fruit (Claims 10 and 16) and that the addition of the fruit "reduces the temperature of the mixture to a point below which cooking of fresh fruit will occur" (Claims 9 and 17). *Baker* discloses the use of frozen fruit juices, while *Waitman* teaches the addition of "cooked fruits" (Col. 5, Ln. 58). Thus, a first contradiction arises in that one piece of art teaches the use of frozen fruit juices while the other piece of art teaches the use of cooked fruit. It is difficult to understand how such divergent teachings can be used for the point of adding a frozen

fruit to a mixture. Further, neither *Waitman* nor *Baker* teach the limitation that the addition of such frozen fruit reduces the temperature of the mixture to a point below which the cooking of said food pieces will occur. How any of this can be combined with the underlying prior art (*Olliver*) that requires no heating be used in the entire process to begin with, further shows the inappropriateness of combining these references. For at least the reasons stated above, Applicants respectfully request that Examiner withdraw the rejection of Claims 9-11, 16 and 17 as being unpatentable over *Olliver* in view of *Ross*, and further in view of *Baker* and *Waitman*.

Examiner rejected Claims 12 and 18 as being unpatentable over *Olliver* as previously applied. This rejection is respectfully traversed.

As noted above, *Olliver* does not disclose all of the elements of the underlying independent Claims 1 and 14. For this reason alone, *Olliver* cannot be further used in support of a rejection of Claims 12 and 18 as suggested by Examiner.

Further, Examiner offers no support for the position that the specific addition rate of the pectin to agitation rate of mixing required as limitations in Claims 12 and 18 would have been obvious to one of ordinary skill in the art. The MPEP admonishes that it is "not ... appropriate for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known." MPEP §2144.03.a. In cases involving chemical theories, it has been held that, in order to establish a *prima facie* case of obviousness, the PTO "must provide evidentiary support for the existence and meaning of that theory." *In Re Grose*, 592 F.2d 1161, 1167-68, 201 USPQ 57, 63 (CCPA 1979). The MPEP makes it clear that the "examiner must provide specific factual findings predicated on sound, technical and scientific reasoning to support his or her conclusion of common knowledge The applicant should be presented with the explicit basis on which

the examiner regards the matter as subject to official notice and be allowed to challenge the assertion in the next reply after the office action in which the common knowledge statement was made." MPEP §2144.03.b. In the event that Examiner maintains the rejection of Claims 12 and 18 under 35 USC §103(a), Applicants respectfully request that Examiner provide specific support for such factual assertions.

Examiner rejected Claims 13 and 19-21 under 35 USC §103(a) as being unpatentable over *Ross*. This rejection is respectfully traversed.

Without citing any evidence to support the assertion, Examiner takes the position that the product produced by the Applicants' process is the same as or obvious from a product produced by the *Ross* process. As noted previously, it is not Applicants' burden to disprove something that is not in the record. Further, the evidence that is in the record clearly disproves Examiner's assertion in this regard. *Ross* specifically teaches a stabilized jelly filling for cakes and cookies that can be subjected to high speed extrusion mechanisms for the purpose of filling cakes and cookies without becoming unstable.

Despite the description of a product that clearly is dissimilar from the product produced by Applicants' process, Examiner also takes the position that the *Ross* disclosure of the use of natural flavorings in this extruded gel is the same thing as Applicants' disclosure of the use of fruit in its process. Applicants respectfully request an explanation of Examiner's rationale as to why the teachings of a jelly filling for cakes and cookies that must remain stable during high speed extrusion can have any relation to the product disclosed and claimed by Applicants and that each would use fruit, even though the use of fruit is not disclosed in *Ross*.

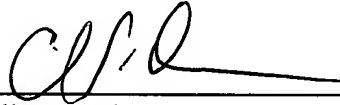
CONCLUSION

In light of the amendments and the arguments made by Applicants above, Applicants submit that all existing claims are now in condition for allowance. Applicants respectfully request that Examiner withdraw all rejections with regard to the above-referenced claims in reliance on one or more of the grounds submitted by Applicants.

If there are any outstanding issues that the Examiner feels may be resolved by way of a telephone conference, the Examiner is cordially invited to contact Colin P. Cahoon at 972-367-2001.

The Commissioner is hereby authorized to charge any payments that may be due or credit any overpayments to CARSTENS & CAHOON, L.L.P. Deposit Account 50-0392.

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